

UNITED STATES DISTRICT COURT
FOR THE
DISTRICT OF MASSACHUSETTS

MICHAEL KEVIN DuPONT,
PETITIONER

V.

DAVID NOLAN,
RESPONDENT

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*
*
* No. 04-11431-GAO
*
*

BLAKELY V. WASHINGTON, 124 S.Ct. 2531(2004)LEGAL GROUND MOTION
FOR IMMEDIATE BAIL AND NOTICE OF COMPLAINT AGAINST JUDGE
O'TOOLE FOR UNTIMELY RULINGS AND COVERING UP FOR PROSECUTORS

Now comes the unlawfully imprisoned Petitioner, citing Judge O'Toole's principle of "enough is enough", US V. NORTH, 98-10176-GAO (3/10/00 transcript page 138), and, where Petitioner's sentence expires in three months after having served eight years excessive time over wrap up due to pending APPRENDI-type violation of the rules of BLAKELY V. WASHINGTON, 124 S.Ct.2531(2004), especially the state Court's decision being contrary to the Apprendi-Blakely "impact analysis", UNITED STATES V. MUFFLEMAN, 327 F.Supp2d 79,88-89 (D.Mass 2004), Petitioner, for a third time, moves for immediate bail release under the Blakely bail decision in UNITED STATES V. CASTRO, 382 F3d 927,929(9th Cir 2004) (see former Docket entries #8, #19, #21), and, in relation thereto attaches an advance copy of his 12/6/04 letter ^{28 USC § 5358} complaint to the First Circuit Administrator which concerns Judge O'Toole's pattern of untimely rulings in many other case, and in particular Judge O'Toole's specifically covering-up for unethical Ass.Atty.General Susan Reardon in this case and his 18 USC § 2 aiding and abetting her fraudulent obstruction of justice conspiracy with state prosecutors Judge Quinlan is also covering up for (see attached exhibit state DE#597, #598) by Judge O'Toole failing to refer her to the Board of Bar Overseers and delaying rulings in a joint venture conspiracy to moot the habeas excessive sentence grounds (DE#20, #23, #25, #26, #27, #28, #29, #30, #31-36). IF not immediately released on bail, petitioner shall lawfully impose sanctions using first amendment rights to make Judge O'Toole work much harder by ^{PROVIDING} ~~providing~~ massive pro bono assistance to O'Toole's

other litigant victims upon release anyway in March 2005 !
November 25, 2004

Copy served on corrupt and unethical AAG Susan Reardon
cc. State Court files

SUBMITTED BY,

Michael Kevin DuPont

Michael DuPont Pro Se
PO Box 100
S.Walpole, MA.02071

very detailed, not docketed this so
removed 1/12/05 after visit with my Amabile

Submitted Aug. 3, 2004.*
Memorandum Disposition
Filed Aug. 13, 2004.

Memorandum Disposition Withdrawn
Aug. 27, 2004.

Filed Aug. 27, 2004.

Background: Defendant was convicted in the United States District Court for the Central District of California, Gary L. Taylor, J., of conspiracy to possess with intent to distribute cocaine and possession with intent to distribute cocaine. Defendant appealed.

Holding: The Court of Appeals held that remand for consideration of defendant's sentence was warranted.

Ordered accordingly.

Criminal Law §-1181.5(8)

Remand for consideration of defendant's sentence was warranted, where enhanced sentence imposed on basis of judge-found facts violated Sixth Amendment, cases further addressing that issue were pending before Supreme Court, and defendant would have already completed, or nearly completed, serving his sentence if his sentence had been based only upon facts that were found by jury. U.S.C.A. Const. Amend. 6.

H. Dean Steward, San Clemente, CA,
for the defendant-appellant.

* This panel unanimously finds this case suitable for decision without oral argument. See Fed. R.App. P. 34(a)(2).

1. In *Castro v. United States*, 531 U.S. 1063, 121 S.Ct. 751, 148 L.Ed.2d 654 (2001) (mem.), the Supreme Court vacated under *Apprendi v. New Jersey*, 530 U.S. 466, 120 S.Ct. 2348, 147 L.Ed.2d 435 (2000), our opinion in *United States v. Castro*, 229 F.3d 1159

Debra W. Yang, Steven D. Clymer, and Beverly Reid O'Connell, Los Angeles, CA, for the plaintiff-appellee.

Appeal from the United States District Court for the Central District of California, Gary L. Taylor, District Judge, Presiding. D.C. No. CR-98-00089-GLT-01.

Before REINHARDT, KOZINSKI, and CLIFTON, Circuit Judges.

PER CURIAM:

Juan Benito Castro appeals, asserting both that there was a fatal variance between the indictment and the facts presented at trial and that his re-sentencing was unconstitutional because it was based on facts that were found by the district judge, not a jury.¹ We reject his fatal variance claim and affirm his conviction in a separate memorandum disposition filed concurrently herewith.

In *United States v. Ameline*, 376 F.3d 967 (9th Cir.2004), we held that *Blakely v. Washington*, — U.S. —, 124 S.Ct. 2531, 159 L.Ed.2d 403 (2004), applied to the United States Sentencing Guidelines and, thus, the imposition of an enhanced sentence on the basis of judge-found facts violates the Sixth Amendment. After we decided *Ameline*, but prior to the submission of this case, the Supreme Court granted certiorari in *United States v. Booker*, 375 F.3d 508 (7th Cir.2004), *cert. granted*, — U.S. —, — S.Ct. —, — L.Ed.2d —, 73 U.S.L.W. 3074 (U.S. Aug. 2, 2004) (No. 04-104), and *Fanfan v. United*

(9th Cir.2000) (table). On remand, we reinstated our previous opinion with the exception of the portion that affirmed Castro's life sentence and remanded for further proceedings. *United States v. Castro*, 35 Fed.Appx. 553 (9th Cir.2002) (mem.). The district court re-sentenced Castro to a total of 420 months in prison.

States, No. 03-47, 2004 WL 1728114 (D.Me. June 28, 2004), *cert. granted*, — U.S. —, — S.Ct. —, — L.Ed.2d —, 73 U.S.L.W. 3074 (U.S. Aug. 2, 2004) (No. 04-105). Both of these cases deal with the same sentencing issues that we decided in *Ameline*.

As we recognized in *Ameline*, "the *Blakely* court worked a sea change in the body of sentencing law." 376 F.3d at 973. Whatever the outcome of the Supreme Court proceedings in *Booker* and *Fanfan*, those decisions will likely have a profound impact upon our disposition of sentencing issues in direct criminal appeals and will certainly affect the continued vitality of *Ameline*. Accordingly, in a case in which the defendant appeals both his conviction and his sentence, if we decide to affirm the conviction and if the sentence imposed implicates *Blakely* or *Ameline*, we would ordinarily withhold our decision until the court decides *Booker* and *Fanfan*.² See, e.g., *Comer v. Stewart*, 312 F.3d 1157, 1158 (9th Cir.2002) (holding proceedings in abeyance pending our decision in a relevant case). Similarly, if we have already issued our decision in such a case, but have not yet issued the mandate, we would ordinarily stay further proceedings. See, e.g., *Pizzuto v. Arave*, 280 F.3d 1217 (9th Cir. 2002) (staying the mandate pending the

2. If we decide to reverse the conviction, there would be no need to reach the sentencing issue, and we would proceed in the normal course.

3. In *Ameline*, we held that we are not precluded from addressing *Blakely* issues even when a defendant raises them for the first time after the case is submitted. 376 F.3d at 972-74. Although we have the authority to identify and consider such sentencing issues sua sponte, it would be appropriate for parties with pending cases to inform this court by letter at any time jointly or severally, when a potential *Blakely* or *Ameline* issue exists, or when particular circumstances warrant action on our part prior to the Supreme Court's

decisions. We note with approval that Castro filed a letter advising this court that his re-sentencing was affected by *Blakely*. Absent particular circumstances warranting earlier action, a motion to file a supplemental brief or a supplemental petition raising *Blakely* or *Ameline* issues will ordinarily be denied without prejudice to renew following the Supreme Court's decisions. A petition for panel rehearing or for rehearing en banc raising *Blakely* or *Ameline* issues will also likely be held in abeyance in most cases. If further proceedings have been stayed, no such petition need be filed until the stay expires or is terminated. If no stay has been issued, either party may request that one be entered.

Accordingly, Castro's sentence is RE-MAINED for such further proceedings as the district court deems appropriate under the circumstances.

The mandate shall issue forthwith.



Supreme Court's decision in a related case).

Here, however, circumstances prompt us to act on the sentencing issues at this point, instead of staying proceedings pending the Court's decisions in *Booker* and *Fanfan*. Had Castro's sentence been based only on the facts that were found by the jury and not on those found by the district judge, he would already have completed serving his sentence. If we were to reverse the case to the district court for whatever action it might take as to the sentence, we deem it appropriate to remand the case to the district court for whatever action it might take as to the sentence under the circumstances. Among the options available to the district court, within the exercise of its discretion, would be to reconsider its sentence or to stay further proceedings pending the outcome of *Booker* and *Fanfan*, with or without

Accordingly, Castro's sentence is RE-MAINED for such further proceedings as the district court deems appropriate under the circumstances.

The mandate shall issue forthwith.



U.S. v. CASTRO
Cite as 382 F.3d 927 (9th Cir. 2004)

MIDDLESEX, SS.

COMMONWEALTH OF MASSACHUSETTS

INDICTMENT NO.
85-00987

COMMONWEALTH

VS.

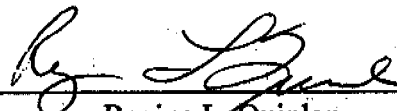
MICHAEL DUPONT
DEFENDANT

ORDER ON COMMONWEALTH'S MOTION TO ENLARGE TIME,
DEFENDANT'S OPPOSITION AND
DEFENDANT'S MOTION FOR RELEASE UNDER MRCP 30(A)

The Commonwealth's Motion to Enlarge Time to file an opposition to the defendant's Motion for Release under MRCP 30(A). The Defendant has filed an opposition which is abusive and degrades the administration of justice and derogates from the authority and dignity of the court. [See paper numbered 597]. Consequently, pursuant to the inherent power of the court, the court **ORDERS** that the defendant be sanctioned as follows:

THE DEFENDANT'S MOTION FOR RELEASE UNDER MRCP 30(A) IS DENIED WITHOUT A HEARING AND WITH PREJUDICE AS A SANCTION FOR THE CONTEMPT OF THE COURT AND THE COMMONWEALTH AS REFLECTED IN THE DEFENDANT'S PRELIMINARY OPPOSITION ... [TO THE COMMONWEALTH'S] MOTION FOR TIME EXTENSION ...

No action need be taken on the Commonwealth's Motion to Enlarge Time since the issue is moot.


Regina L. Quinlan
Associate Justice of the Superior Court

Date: October 18, 2004

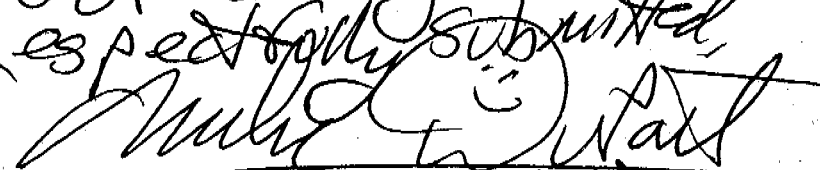
3) The STATE COURT's Refused To Apply
 the Appendix IMPACT ANALYSIS
 from 9/20/02 Rule 30ca) DE #554
 MOTION AND 01-A-1792 briefs, but
BLAKEY v WASHINGTON 124 S. Ct. 2531 (2004)
 won, And BLAKEY merely reaffirmed
 the right to 1976 immediate release
 in this case AND 8 YEARS of
 UNLAWFUL imprisonment.

4) ANY further delay threatens To
 KILL ~~Defendant~~ DUFONT who has
 just been denied Hepatitis "C"
 Peg-INTRON medication this week,
 OR INCREASE Middlesex County
 TAXPAYERS \$ DAMAGES TO DUFONT
 by at least one-hundred thousand dollars!

CONCLUSION

The commonwealth has not responded
 in 23 months so this court should not
 allow pathetic lying ADA D'ANGELO
 A 24th month of delay

8/18/04 copy
 Served on
 ADA Peter D'Angelo

Respectfully submitted,


Michael Kevin Dufont PRO SE
 P.O. Box 100

-32f3- S. Walpole, MA 02091

Michael Kevin DuPont w/44692
P.O. Box 100
So. Walpole, MA. 02071
December 6, 2004

FIRST CIRCUIT ADMINISTRATOR GARY Wente
ONE COURTHOUSE WAY (SUITE 3700)
BOSTON, MA. 02210

Chief Judge William Young
ONE COURTHOUSE WAY (SUITE 5710)
BOSTON, MA. 02210

RE: BIVENS NOTICE AND COMPLAINT AGAINST
JUDGE GEORGE O'TOOLE IN DUPONT V.
NOLAN, 04-11431-GAO FOR U.S. FAILURE TO
ADEQUATELY TRAIN + SUPERVISE O'TOOLE AND
HIS PATTERN OF NEGLIGENT UNTIMELY RULINGS
AND BIASED COVERING UP FOR PROSECUTORS
28 USC § 372 JUDICIAL COUNSEL MISCONDUCT COMPLAINT
Chief Judge Young AND CIRCUIT ADMINISTRATOR

AS Supreme Court Justices Douglas, Stevens,
AND Blackmun often wrote, Justice delayed
is Justice Denied!

my 20 year MARCH 1985 sentence expiring
in MARCH 2005, with 3,000 ^{DAYS} Aggravated punishment
TAKING of good Time for ch. 129 § 129 element of
A CRIME IN A CORRECTIONAL INSTITUTION which was
NOT in my indictment AND NOT in plea colloquy
which I contested = blatant violation, is being ignored
- Ld 2 - C see other side please →

by pro government biased AND lazy Judge O'Toole, whose lawyers weekly website ~~data~~ shows has never granted a 28 USC § 2254 Habeas petition in the past 2 years, AND whose docket entries in many other cases shows pattern of untimely late rulings in criminal AND Habeas corpus cases.

My attached 04-11431-GAO docket entries show a dozen unruled on motions AND O'Toole's failure to correct prosecutorial misconduct as set out in my 11/25/04 third request for bail. All of my supporting exhibits were filed months ago AND it doesn't take a rocket scientist to compare the Habeas petition supporting fact page citations to state court record to rule I'm fully exhausted, AND the Blakely v Washington, 124 S.Ct. 2531 (2004) issue is a no brainer since I filed my 12/13/99 plea transcript, April 1985 indictment AND grand jury minutes showing the absence of aggravated punishment element indictment or plea colloquy admission. Plus, the record shows I was not "in" halfway house AND halfway house did not meet statutory requirements so I did not commit crime "confined in a correctional facility." Plus, plus my sentence expired 40 days before date of crime.

Anyway, the United States - you, have been negligently supervising untrained Judge O'Toole AND I request he be investigated, plus Bivens damages for more than six months imprisonment (\$100,000.00 or more) that I would have been free if he read my case AND made timely rulings. Please transfer my case to a trained experienced judge ASAP!

Sincerely,

-2 of 2-

Mike W. Paul

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF CORRECTION INMATE GRIEVANCE APPEAL FORM FORWARD TO SUPERINTENDENT

Name	DUPONT MICHAEL		Institution	MCI CEDAR JUNCTION
Number	W44692	Housing	BLOCK 1	Appeal Date 06-JUL-2004 Date Of Grievance 25-JUN-2004 Appeal Received Date 07-JUL-2004

Appeal I incorporate herein by reference my attached grievance form facts & remedies requested, with exhibits (you can keep the attached extrat copy of exhibit Court documents for your file)

The grievance Officer and whoever she talked to lied because the absence of indictment aggravated punishment element has not been decided by state Superior or Appeals Court in my litigation. The 12 1/2 day per month additional punishment above 17 1/2 day normal sentence range was not decided by state courts who misread the Apprendi decision and June 24, 2004 Blakely case is a new decision which was not litigated before it was just published.

My attached 12/13/99 plea transcript shows no factual basis, or waiver, on element of crime in prison, and my attached indictment shows chapter 127, section 129 element was not part of charges against me.

Remedy Requested

The three million dollars for 3,000 days unlawful confinement plus one-thousand dollars per day since June 24, 2004, plus one-hundred thousand dollars chapter 258 tort claim damages are requested, plus fifty-thousand dollars for each legal department, Superintendent and Commissioner defendant is requested as punitive damages for your refusal to consider and recognize attached BLAKELY V. WASHINGTON United States Supreme Court decision that holds I cannot be imprisoned now for c.127, section 129 aggravated punishment element which state did not charge in my indictment (slip opinion pages 5, 15; O'Connor dissent page 5; Breyer dissent page 14 all nine justices agreeing on indictment element requirement). U.Mass threatens to stop my hepatitis "C" medication next week, instead of ull year I need, adds damage prejudice, plus loss of work earning I should be released for.

Staff Recipient

Aucoin Ann Marle CO I

Signature

DECISION BY SUPERINTENDENT

Appeal Received Date 07-JUL-2004 **Decision Date** 03-AUG-2004 **Decision** DENIED

Decision By Nolan David F SUPERINTENDENT

Reasons The MCI-CJ Paralegal, Cheryl Maher was contacted and informed this office that the issue was already litigated in Dupont v. Commissioner, 59 Massachusetts Appellate Court 908 (2003). Further appellate review denied, 441 Mass. 1/ 02 and Certiorai denied, 124 Supreme Court on 6/28/04.

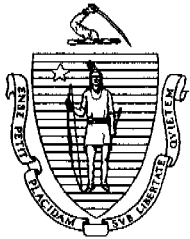
Signature

11/18/04 - In accordance with 103 CMR 491, I have reviewed grievance/grievance appeal #4420.

Please be advised that I support the Superintendent's decision to deny your grievance, as I concur with the institutuional summary of findings.


Kristie Ladouceur
Department Grievance Coordinator

Date



THE COMMONWEALTH OF MASSACHUSETTS
COMMISSION ON JUDICIAL CONDUCT

14 BEACON STREET SUITE 102
BOSTON, MASSACHUSETTS 02108
(617) 725-8050
FAX (617) 248-9938

January 4, 2005

Mr. Michael Kevin DuPont
P.O. Box 100
South Walpole, MA 02071

Re: **Complaint Number 2004-764**

Dear Mr. DuPont:

This will acknowledge receipt of your complaint against Judge Regina L. Quinlan. Your complaint has been screened and will be looked into.

The Commission's statute provides that its proceedings are confidential unless and until such time as formal charges and the judge's response thereto are filed with the Supreme Judicial Court. Therefore, it is possible that you will not at certain stages be aware of the action of the Commission with respect to your complaint. You will be informed of the disposition.

Sincerely,

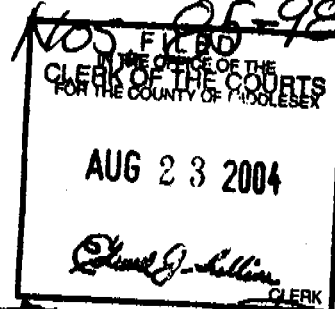

Tina Fisher
Staff Attorney

MIDDLESEX SS

COMMONWEALTH

V.

MICHAEL DUPONT



EXHIBIT

PRELIMINARY OPPOSITION TO LYING
PROSECUTOR D'ANGELO'S FALSE MOTION
FOR TIME EXTENSION TO TWO YEARS
DELAY FROM RULE 30(a) 9/20/02 MOTION

Now comes the UNLAWFULLY \$1,000
CONFINED DEFENDANT WITH \$1,000
PER DAY DAMAGES ACCRUING AGAINST
THE COMMONWEALTH, AND OPPOSES
LYING PROSECUTOR D'ANGELO'S 8/12/04
MAILED/SERVED MOTION FOR ANOTHER
MONTH EXTENSION TO OPPOSE THE
9/20/02 DE #554 RULE 30(a) MOTION
THAT HAS BEEN PENDING FOR ALMOST
TWO YEARS, IN VIOLATION OF Judge
QUINLAN'S 7/2/04 DE #592 ORDER
FOR THE COMMONWEALTH OPPOSITION
TO BE FILED NO LATER THAN
AUGUST 13, 2004.

- 1 of 3 -

597

14 BEACON STREET SUITE 102
BOSTON, MASSACHUSETTS 02108

Phone: (617) 725-8050

Fax: (617) 248-9938

EXHIBIT

COMPLAINT FORM

CJC Complaint No. _____

This form is designed to provide the Commission with the information to screen your complaint and to begin an investigation of your allegations. Please read the accompanying materials on the Commission's function and procedures before filling out this form. ONLY ONE JUDGE MAY BE COMPLAINED OF ON EACH FORM.

PLEASE TYPE OR PRINT CLEARLY ALL INFORMATION

Your name Michael Kevin DuPont
Address P.O. Box 100
South Walpole, MA Zip Code 02071

Daytime telephone _____

Name of judge Regina QuinlanCourt Middlesex Superior CourtCase name Commonwealth v DuPontDocket number 85-981 thru 85-987Attorneys involved Asst. District Attorney Peter D'Angelo1980's + 1990's +
Date(s) of misconduct September 2002 thru October 2004, 11/13/03 and 10/18/04Has an appeal been filed? yes 04-P-1487A summary of the general nature of your complaint: SJC Rule 3B09 Violations

include, denial of any fair opportunity to be heard and
Quinlan covering up for prosecutor, Canon 3CB(1) and
not being knowledgeable of law, Canons 2(A), 3CB(2)
and because my Grossberg & others told me before that Judge
Quinlan was a biased judge who used to have
a romantic relationship with former head of Attorney
General's Criminal Bureau Barbara A.H. Smith, and other
lawyer & court officers verified that and also said
Quinlan was dating former prosecutor, now Judge
Margot Botsford in the past, I ask you to investigate
her relationships with prosecutors making her unfit
as a Judge due to her pro government bias ?!?!!!!!

United States District Court
District of Massachusetts (Boston)
CIVIL DOCKET FOR CASE #: 1:04-cv-11431-GAO
Internal Use Only

EXHIBIT

DuPont v. Nolan
Assigned to: George A. O'Toole Jr.
Referred to:
Demand: \$
Lead Docket: None
Related Cases: None
Case in other court: None
Cause: 28:2254 Petition for Writ of Habeas Corpus (State)

Date Filed: 06/17/04
Jury Demand: None
Nature of Suit: 530 Habeas Corpus
(General)
Jurisdiction: Federal Question

Petitioner

Michael Kevin DuPont

represented by **Michael Kevin DuPont**
MCI Cedar Junction
P.O. Box 100
South Walpole, MA 02071
PRO SE

V.

Respondent

David Nolan, Superintendent

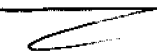
represented by **Susanne G. Reardon**
Attorney General's Office
One Ashburton Place
18th Floor
Boston, MA 02108
617-727-2200
Fax : 617-727-5755
Email:
susanne.reardon@ago.state.ma.us
ATTORNEY TO BE NOTICED

Filing Date	#	Docket Text
06/17/2004	<u>1</u>	MOTION for Leave to Proceed in forma pauperis by Michael Kevin DuPont.(Jenness, Susan) (Entered: 06/23/2004)
06/17/2004	<u>2</u>	PETITION for writ of habeas corpus pursuant to 28:2254 , filed by Michael Kevin DuPont.(Jenness, Susan) (Entered: 06/23/2004)

06/17/2004	●	If the trial Judge issues an Order of Reference of any matter in this case to a Magistrate Judge, the matter will be transmitted to Magistrate Judge Bowler. (Jenness, Susan) (Entered: 06/23/2004)
06/17/2004	● <u>3</u>	MOTION to Assignment of Counsel to Expedite Bail Release and for Necessary Evidentiary Hearing by Michael Kevin DuPont. (Weissman, Linn) Additional attachment(s) added on 6/28/2004 (Jenness, Susan). (Entered: 06/25/2004)
06/23/2004	●	Case undergoing preliminary screening (Jenness, Susan) (Entered: 06/23/2004)
06/24/2004	● <u>4</u>	Judge George A. O'Toole Jr.: SERVICE ORDER entered re: 2254 Petition. Order entered pursuant to R.4 of the Rules governing Section 2254 cases for service on respondents. Answer/responsive pleading due w/in 20 days of rept of this order. cc/cl(Weissman, Linn) (Entered: 06/25/2004)
06/24/2004	● <u>5</u>	Judge George A. O'Toole Jr.: ORDER entered granting <u>1</u> Motion for Leave to Proceed in forma pauperis. cc/cl (Weissman, Linn) (Entered: 06/25/2004)
06/24/2004	● <u>6</u>	Judge George A. O'Toole Jr.: ORDER entered denying <u>3</u> petitioner's motions for appointment of counsel and for an evidentiary hearing without prejudice to the re-filing of these motions after the respondent has filed a responsive pleading to the petition.cc/cl (Weissman, Linn) (Entered: 06/25/2004)
06/28/2004	●	Documentation attached to motion No. 3 for appointment of counsel is not scannable however is attached in hard copy to motion. (Jenness, Susan) (Entered: 06/28/2004)
07/02/2004	● <u>7</u>	MOTION for Reconsideration of Counsel Assignment on July 19, 2004 and to Deny Respondent's Time Extensions or to Transfer Case to Judge Lindsay by Michael Kevin DuPont.(Barrette, Mark) (Entered: 07/08/2004)
07/02/2004	● <u>8</u>	EXHIBIT by Michael Kevin DuPont.***Too large to scan*** (Barrette, Mark) Additional attachment(s) added on 7/8/2004 (Barrette, Mark). (Entered: 07/08/2004)
07/02/2004	● <u>9</u>	Verified MOTION for Bail Hearing and to Expedite Bail Release Based Upon Blakely v. Washington, 124 s. Ct. (2004) ***Attachments too large to be Scanned*** by Michael Kevin DuPont.(Barrette, Mark) (Entered: 07/08/2004)
07/06/2004	●	Return receipt received for mail sent to Ms. Cathryn A. Neaves

		Delivered on 6/29/2004 (Barrette, Mark) (Entered: 07/06/2004)
07/06/2004	●	Return receipt received for mail sent to Mr. David Nolan Delivered on 6/29/04 (Barrette, Mark) (Entered: 07/06/2004)
07/15/2004	● <u>12</u>	Document(s) submitted by Michael Kevin DuPont received for filing. Document received: State Appellee's Brief. (Barrette, Mark) (Entered: 07/21/2004)
07/16/2004	● <u>10</u>	MOTION for Extension of Time to 8/11/04 to File Answer to <i>habeas corpus petition</i> by David Nolan.(Reardon, Susanne) (Entered: 07/16/2004)
07/16/2004	● <u>11</u>	MOTION for Extension of Time to 8/11/04 to File Answer to <i>habeas corpus petition</i> by David Nolan.(Reardon, Susanne) (Entered: 07/16/2004)
08/06/2004	● <u>13</u>	MOTION for Extension of Time to 8/20/04 to File Answer re <u>2</u> Petition for writ of habeas corpus (28:2254) by David Nolan. (Reardon, Susanne) (Entered: 08/06/2004)
08/09/2004	●	Judge George A. O'Toole Jr.: Electronic ORDER entered granting <u>10</u> Motion for Extension of Time, until 8/11/04, to Answer re <u>2</u> Petition for writ of habeas corpus (28:2254) David Nolan., terminating <u>11</u> Motion for Extension of Time to Answer re <u>2</u> Petition for writ of habeas corpus (28:2254) David Nolan. cc/cl (Lyness, Paul) (Entered: 08/09/2004)
08/12/2004	● <u>14</u>	MOTION for Entry of Default by Michael Kevin DuPont. (Attachments: # <u>1</u> Affidavit For Entry of Default)(Barrette, Mark) (Entered: 08/17/2004)
08/17/2004	● <u>19</u>	MOTION for Default Judgment and Remedy of Immediate Release or Bail as to Michael Kevin Dupont by Michael Kevin DuPont. (Barrette, Mark) (Entered: 08/30/2004)
08/17/2004	● <u>20</u>	MOTION to Strike False Enlargement of Time Pleadings and Answer Whenever it is Untimely Filed <u>13</u> MOTION for Extension of Time to 8/20/04 to File Answer re <u>2</u> Petition for writ of habeas corpus (28:2254) by Michael Kevin DuPont.(Barrette, Mark) (Entered: 08/30/2004)
08/17/2004	● <u>21</u>	MOTION for Blakely v. Washington Summary Judgment Release on Grounds 3,6,7,15 and Dretke v. Haley Findings/Bail on Sentence Enhancement Actual Innocence Grounds 4 and 5 by Michael Kevin DuPont.(Barrette, Mark) (Entered: 08/30/2004)

08/20/2004	● <u>15</u>	ANSWER to Complaint <i>habeas corpus petition</i> by David Nolan. (Reardon, Susanne) (Entered: 08/20/2004)
08/20/2004	● <u>16</u>	MOTION to Dismiss <i>petition for writ of habeas corpus</i> by David Nolan.(Reardon, Susanne) (Entered: 08/20/2004)
08/20/2004	● <u>17</u>	MEMORANDUM in Support re <u>16</u> MOTION to Dismiss <i>petition for writ of habeas corpus</i> filed by David Nolan. (Reardon, Susanne) (Entered: 08/20/2004)
08/23/2004	● <u>18</u>	Supplemental ANSWER to Complaint(Volume 1&2***Too Large to be Scanned***) by David Nolan.(Barrette, Mark) (Entered: 08/24/2004)
08/24/2004	● <u>22</u>	Petitioner's Filing of Grievance Appeal # 4420 Concession by Respondent Nolan's 8/3/04 Exhibit Stipulating Full Exhaustion of Apprendi-Based Blakely v. Washington Grounds 3,6,7 and 15 Allowing Partial Summary Judgment Immediate Release from Michael Kevin Dupont. (Barrette, Mark) (Entered: 08/30/2004)
08/25/2004	● <u>23</u>	Opposition re <u>16</u> MOTION to Dismiss <i>petition for writ of habeas corpus</i> filed by Michael Kevin DuPont. (Barrette, Mark) (Entered: 08/31/2004)
08/31/2004	● <u>24</u>	Petitioners Decisional Support for Summarily Denying the Motion to Dismiss from Michael Kevin Dupont. (Barrette, Mark) (Entered: 08/31/2004)
09/09/2004	● <u>26</u>	MOTION Investigation of State Atty. General's Office Targeting Some Federal Judges For Omission of Collateral Exhaustion Records by Michael Kevin DuPont.(Barrette, Mark) (Entered: 09/15/2004)
09/09/2004	● <u>27</u>	NOTICE of Intent To File Dupont v O'Toole Bivens Complaint For Untrained Judge Failing To Compel Respondent to File 01-P-1792 Exhaustion Record and Delay Supporting Judge O'Toole Disqualifying Himself by Michael Kevin DuPont (Barrette, Mark) (Entered: 09/15/2004)
09/09/2004	● <u>28</u>	Demand for Expedited Decision on Merits and Assigned Counsel To Facilitate Release or for Judge O'Toole to Disqualify Himself by Michael Kevin DuPont. (Barrette, Mark) (Entered: 09/15/2004)
09/09/2004	● <u>30</u>	Verified Demand For Denial of Respondent's Motion to Dismiss and for Exposure of AAG Susan Reardon's Misconduct or for Judge O'Toole to Disqualify Himself by Michael Kevin DuPont to <u>16</u> MOTION to Dismiss <i>petition for writ of habeas corpus</i> . (Barrette, Mark) (Entered: 09/15/2004)

09/15/2004	● <u>25</u>	MOTION to Strike Respondents Answer , Supplemental Answer and Motion To Dismiss for Bad faith Omission of 01-P-1792 Exhaustion Record and False Answer Denial of Such Knowledge <u>15</u> Answer to Complaint, <u>16</u> MOTION to Dismiss <i>petition for writ of habeas corpus</i> , <u>18</u> Answer to Complaint by Michael Kevin DuPont.(Barrette, Mark) (Entered: 09/15/2004)
09/15/2004 	● <u>29</u>	Third MOTION to Appoint Counsel To Expose the Respondent's Misconduct and Expedite Hearings For Release Within Six Months Remaining To be served on Twenty Year Sentence by Michael Kevin DuPont. (Barrette, Mark) (Entered: 09/15/2004)

Exhibit

MICR1985-00981
Commonwealth v Dupont, Michael K

Date	Paper	Text
	553.0	for New Trial after Evidentiary Hearing with Assignment of Counsel, with Included Request for c 278 S 29B Rulings, Reconstruction of Inaccurate Transcripts after tape production and Missing DE # 196 with Dismissal Reconsideration based on Seventeen Year Prejudicial Direct Appeal Delay. (sent to Grabau, J)
09/20/2002	554.0	<u>Defendants First Verified Rule 30 (a) Motion for Release from Unlawful Restraint in the Nature of Habeas Corpus ad Subjiciendum, with Recalculation of Jail Credits and Post-Trial Discovery or Evidentiary Hearing Represented by Assigned CPCS Counsel at Necessary Resentencing Hearing (sent to Grabau, J)</u>
09/23/2002	555.0	Motion by Deft: to Compel Clerk and or Prosecutor to Provide Appendix Copy of DE # 196 with Supporting Affidavits and Transcriot Record to the Court of Appeals
10/11/2002	556.0	Letter Received from defendant: Re Denial of Access to Record Appendix documents in 85-981-87 Necessary to Apeal Due 10/10/02
10/11/2002		Motion (P#555) Defendants Motion to Compel is Denied as the Clerks Office after diligent search cannot locate De # 196 nor can the DA's Office. (Chalres Grabau, Regional Administrative Justice)
10/16/2002		Letter/Request # 556 Denied . See my Previous Marginal Ruling on Paper # 555. (Charles Grabau, Regional Administrative Justice)
10/18/2002		Copy of Complete Pleading # 480 and Decison on Pleadings # 555 & 556 Sent to Defendant this day. No further Copies will be sent per Order of Grabau, J
10/21/2002	557.0	Motion by Deft: Verified Commonwealth V Frank Motion for Judge Grabau to Reconsider his 9/9/02 Deniel of Counsel and Emergency Motion for Bail Release Hearing or Hepatitis C Treatment Orders in Light of Atty Grossbergs affidavit admitting Breese V. Commonwealth Ineffective Assistance which also requires Rule 30 (a) (b) Motions must be Granted
10/24/2002	558.0	Verified Motion by Deft: for Judge Garsh to Fashion a Remedy for Separate Appeal Docketing, bypassing screening for Assignment of Counsel and Hepatitis "C" Medical Treatment bail Release Remedy for Judge Garsh's Three Year Obstruction of Appeal, Missing New Trial Motion and Affidavits, failure to Rule on DE# 230 Reconisderation and Failure to Make Findings of Fact on Twelve Year Delay.
10/24/2002	559.0	Affidavit of Joseph Delong in Support of Defendants Motions for Assignment of Competent Counsel for an Evidentiary hearing, and Ruel 30 (a) Rle 30 (b) Motions
10/24/2002	560.0	Affidavit of Kurt King in Support of Defendnts Motions for Assignment of Counsel and for a Hearing.
10/24/2002	561.0	Affidavit of John Stote in Support of Defendants Motion for Counsel Assignment and Evidentiary Hearing
10/24/2002		Motion # 558, This Matter has been Referred to me in my Capacity as the Regional Administrative Judge for Criminal Matters. The defendants Motion to fashion a remedy for separate appeal is Denied. Paper # 196 as previously indicated in a Marginal Ruling, is not in Possession of the Clerks Office . The staff of the Clerks Office has

Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURTCase Summary
Criminal DocketMICR1985-00981
Commonwealth v Dupont, Michael K

Date	Paper	Text
06/04/2003	583.0	Commonwealth files Memorandum in Opposition to Defendants Mass R Crim P 30 (a) Motion for Immediate Release
06/17/2003	584.0	RULING ON DEFENDANT'S FIRST VERIFIED RULE 30 (A) MOTION FOR RELEASE FROM UNLAWFUL RESTRAINT. I decline to act on the instant Motion until the Appeals Court decides the defendants appeal on the Worcester County Petition for Habeas Corpus which is now a pending matter (Appeals Court 01-P-1792) and Defendants appeal of a denial of another Motion for New trial (Appeals Court No 02-P-20) (Charles M. Grabau, Justice of the Superior Court)
08/22/2003	585.0	Appellate Division: Defendant withdrew his petition for review of sentence. 5/20/03 (Robert DelloRusso, A/C)
08/22/2003	586.0	Order: Present: Donohue, Graham & Quinlan, J. The appeal of the defendant for review of sentence to the M. C. I. Cedar Junction, imposed November 10, 2000, on indictments 85-897 by the Superior Court Department for the County of Middlesex having been heard and reviewed, it is ORDERED: that the judgments imposing said sentences stand and that said appeal be and is hereby dismissed. By the Appellate Division /s/ Joseph M. Rubino A/C
09/23/2003	587.0	Motion by Deft: For Rule 30(a) Hearing, Rulings on Issues Appeals Court Avoided and Assignment of Competent Counsel. (sent to Judge Quinlan)
09/23/2003	588.0	Motion by Deft: For Rulings and Hearing on Rule 30(b) Motion with Counsel Assigned For That and Rule 29 Filing. (sent to Judge Quinlan)
10/06/2003	589.0	Rescript received from Appeals Court; Order denying defendants motion to withdraw guilty plea AFFIRMED
10/06/2003		Motion (P#587) Referred to CPCS screening panel (Quinlan, J)
11/13/2003	590.0	Order on Defendant's Motion For Rule 30(A) Hearing and Assignment of Counsel: ORDER: For the foregoing reasons, the Defendant's Motion for Rule 30(a) Hearing and Assignment of Counsel is DENIED. (Regina L. Quinlan, Justice) notice sent
07/02/2004	591.0	Oversentenced Defendants Blakeley V Washington Demand for Immediate Bail Release and Rule 30 (a) Decision with a CPCS Assignment of Counsel to Expedite Bail and Release Hearing
07/02/2004	592.0	PROCEDURAL ORDER: The defendant hs filed a motion for post-conviction relief. The Court ORDERS that the Commonwealth file a Response to the Defendants Pending Motion on or before August 13, 2004. By the Court, Quinlan, J
07/07/2004	593.0	Deft files Supplemental Blakely v. Washington, 124 S.Ct. (2004) Rule 30(a) Release Ruling Exhibits and Immediate Bail Request
07/13/2004	594.0	Deft files Supporting Transcript Exhibit for Blakely V. Washington-Type Article 12 Objections, For Limited Three Part Hearing Issue Focusing on Immediate Release of Bail
07/15/2004	595.0	Motion by Deft: For Scheduling of Habeas Corpus Immediate Release Hearing Based on Conceded Error
08/13/2004	596.0	Motion by Commonwealth: to Enlarge Time for Filing Its Motion in Opposition to the Defendant's Motion For Release Under MRCP 30(A)

Commonwealth of Massachusetts
MIDDLESEX SUPERIOR COURTCase Summary
Criminal DocketMICR1985-00981
Commonwealth v Dupont, Michael K

Date	Paper	Text
	596.0	(sent to Judge Quinlan)
08/23/2004	597.0	Deft files Preliminary Opposition to Lying Prosecutr D'Angelo's false Motion for time extension to two year delay from Rule 30(a) 9/20/02 Motion
10/18/2004	598.0	Order on Commonwealth's Motion to Enlarge Time, Defendant's Opposition and Defendant's Motion for Release Under MRCP 30(A): The court ORDERS that the defendant be sanctioned as follows: The Defendant's Motion for Release Under MRCP 30(A) is denied without a hearing and with Prejudice as a sanction for the contempt of the court and the commonwealth as reflected in the Defendant's Preliminary Opposition ...[to the Commonwealth's] Motion for Time Extension.... No action need be taken on the Commonwealth's Motion to Enlarge Time since the issue is moot. (Regina L. Quinlan, J.) notice sent
10/22/2004	599.0	Deft files Indigent Defendant's Request for copy of DE#597 Opposition to Time Extension he needs to file as Federal Habeas and Single Justice Exhibit
10/22/2004	600.0	NOTICE of APPEAL FILED by Michael K Dupont From Denial of Rule 30(a) Motion with Request for Expedited Assembly of Appellate Record Due to Release From Prison in March 2005.
11/01/2004	601.0	Notice of assembly of record; two certified copies of docket entries; P#600 Notice of Appeal sent to the Clerk of the Appeals Court this day
11/01/2004		Notice of assembly of record; sent to James Sahakian, ADA and Michael K. Dupont
11/01/2004		Notice of completion of assembly of record sent to clerk of Appeals Court and attorneys for the Commonwealth and defendant.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
INDICTMENT No.
85-987

COMMONWEALTH

VS.

MICHAEL KEVIN DUPONT
DEFENDANT

ORDER ON DEFENDANT'S MOTION FOR
RULE 30(A) HEARING AND ASSIGNMENT OF COUNSEL

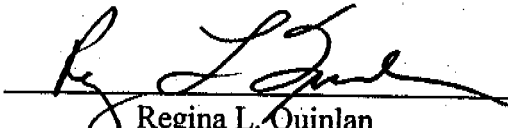
The defendant has filed a Motion for Rule 30(a) Hearing, Rulings on Issues Appeals
Court Avoided and Assignment of Competent Counsel.

Upon review of the motion, the defendant complains of the asserted failure of the
Appeals Court to rule on issues raised in his appeal 01-P-1792. These matters are not properly
before this court.

The defendant's motion was referred to CPCS for screening. CPCS declines to appoint
counsel.

ORDER

For the foregoing reasons, the Defendant's Motion for Rule 30(a) Hearing and
Assignment of Counsel is **DENIED**.


Regina L. Quinlan
Associate Justice for the Superior Court

Date: November 13, 2003

*Not
Decided
AND
NOT
Entered
After
Appeal*

Exhibit

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.

SUPERIOR COURT
INDICTMENT NO.

85-981

COMMONWEALTH

VS.

Michael Kevin Dupont
DEFENDANT

PROCEDURAL ORDER

The defendant has filed a motion for post-conviction relief. The court **ORDERS** that the Commonwealth file a response to the defendant's pending motion on or before August 13, 2004.

By the court,
Quinlan, J.

Date:

7/2/04

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COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, ss.

THE SUPERIOR COURT
INDICTMENT NOS. 85-981 thru 85-987

COMMONWEALTH

vs.


MICHAEL KEVIN DUPONT

**RULING ON DEFENDANT'S FIRST VERIFIED RULE 30(A) MOTION FOR RELEASE
FROM UNLAWFUL RESTRAINT(DOCKET NUMBER 554)**

The Defendant, Michael Kevin Dupont (Dupont), has filed a pleading entitled Defendant's First Verified Rule 30(a) Motion For Release From Unlawful Restraint in the Nature of Habeas Corpus Ad Subjiciendum, With Recalculation of Jail Credits and Post-Trial Discovery or Evidentiary Hearing Represented by Assigned CPCS Counsel at Necessary Re-sentencing (sic) Hearing.

RULING

I decline to act on the instant Motion until the Appeals Court decides the Defendant's appeal of the Worcester County Petition for Habeas Corpus which is now a pending matter (Appeals Court No. 01-P-1792) and Defendant's appeal of a denial of another Motion for New Trial (Appeals Court No. 02-P-20).


Charles M. Grabau
Justice of the Superior Court

Dated: June 16, 2003

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Not decided
Before Appeal